

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

PAN AMERICAN AIRWAYS CORP.,

Plaintiff

v.

ROBERT E. BARNES

Defendant

Case No. 04-CV-10515JLT

**DEFENDANT/COUNTER-PLAINTIFF'S MOTION IN LIMINE FOR A PRE-TRIAL  
RULING AS TO THE STANDARD TO BE APPLIED TO DEFENDANT/COUNTER-  
PLAINTIFF'S DEFAMATION CLAIMS AGAINST THE PLAINTIFF/COUNTER-  
DEFENDANT.**

Now comes the Defendant/Counter-Plaintiff, Robert Barnes, and requests that this Honorable Court enter a pre-trial ruling clarifying the standard to be applied to Mr. Barnes' Defamation counter-claims against the Plaintiff/Counter-Defendant.

As grounds for this motion, Defendant/Counter-Plaintiff states as follows:

1. Mr. Barnes is not a public figure.
2. PanAm's defamatory statements were made in writing.<sup>1</sup>
3. PanAm's statements were made when Mr. Barnes was no longer an employee with Pan Am, and no employer privilege existed.

<sup>1</sup> "Where the plaintiff's action is for libel, as distinguished from slander, it may be actionable per se without the proof of special damages, even though the defamatory words do not impute a crime, or bad character of the plaintiff, or an injury to him in his office or business." See *Muchnick v. Post Pub. Co.*, 332 Mass. 304, 125 N.E.2d 137 (1955)

4. PanAm's defamatory statements alleged "intentional damage to property",  
"conversion" and not properly performing his job.<sup>2</sup>

WHEREFORE, the Defendant, Robert Barnes, respectfully requests that this Court enter a pre-trial ruling determining that Counter-Plaintiff need not establish special damages, and that Counter-Defendant may not assert privilege as a defense.

Respectfully submitted,



Peter Piel  
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Dated: September 12, 2006

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<sup>2</sup> "The test is whether, in the circumstances, the writing discredits the plaintiff in the minds of any considerable and respectable class of the community" id.

Certificate of Service

I, Peter Piel, hereby certify that a true copy of the above document was served upon John J. O'Brien, Jr., the attorney of record for the plaintiff, by hand on this 12<sup>th</sup> day of September 2006.



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